

SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL

FEBRUARY 4, 2013

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

The meeting began at 7:00 P.M. with the prayer and the pledge to the flag. Council members present were Ms. Alves, Mr. McGee, Mr. Yazbak, Mr. Zwolenski and Mr. Flaherty. Also in attendance were Town Administrator Hamilton and Town Solicitor Lombardi.

PRESENTATION OF AUDIT

Ms. Debbie Mitchell of Braver, P.C. highlighted some of the items in the audit.

MOTION by Mr. Yazbak, seconded by Ms. Alves and Mr. Zwolenski, and voted unanimously on an aye vote that the audit report be accepted and that it be declared a public document and can be issued to administration, boards and commissions.

ZONING ORDINANCE AMENDMENT RE: PARKING AND LOADING

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to change Section 6.13.2 to read "In any residence

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district, the parking or storage of all commercial vehicles of over 7.5 tons gross vehicle weight and/or more than (2) two axles shall not be

permitted except where such parking or storage is directly related to and is accessory to a permitted use or legal non-conforming use on the premises.”

Mr. Zwolenski questioned whether Section 6.14(E) should be changed from (10) ten to (15) fifteen feet of a lot line.

Under ‘Commercial Uses’ in Section 6.15.1, Mr. Zwolenski stated the Ordinance Development Committee had recommended there should be two (2) parking spaces per one thousand (1,000), as a minimum, instead of 3.5 parking spaces for retail and service business less than 20,000 square feet because it makes it more economically feasible for the developer as well as removing impervious material. Also for retail and service business 20,000 square feet or more, the ODC had recommended three (3) parking spaces per thousand as a minimum instead of the 3.8 written in the proposed ordinance.

Town Planner Robert Ericson responded that the norm throughout the state is four or five. If you go down to two or three parking spaces, then people will build to the minimum and parking will spill over onto the street.

MOTION by Ms. Alves, seconded by Mr. Yazbak, and voted 4 to 1 (Mr. Zwolenski voted no) on a roll call vote to adopt the ordinance as amended.

PURCHASE AND SALES AGREEMENTS WITH DOWLING VILLAGE ABUTTERS

Mr. Jeffrey Fontaine, principal broker with Fontaine Real Estate, reminded the Council that at the meeting of December 3rd he had brought three abutters to Dowling Village who were still waiting to sell their properties to the developer.

Attorney Michael Kelly, representing Bucci Development, commented that this was a private matter between the parties. The project was delayed at least four years because of lawsuits and appeals. But for some of those issues, there would have been closings. Mr. Bucci is working hard to get tenants.

DOWLING VILLAGE STORMWATER MANAGEMENT AND WATER QUALITY

Mr. Ericson explained that a complaint had been filed by Caroly Shumway and the Valley Alliance for Smart Growth regarding the performance of the SWPPP. A meeting was held today with all parties and negotiations will continue on a settlement. There was a notice of appeal filed by Ms. Shumway and the Valley Alliance but it was put on hold while the negotiations are ongoing. In response to a question by Mr. Yazbak, Mr. Ericson stated the appeal is to the Zoning Board of Review for a decision that Mr. Ericson and Building Inspector Robert Benoit wrote and recorded. An equivalent complaint has not yet been made to DEM but Mr. Ericson believes they are in the process of doing so.

Mr. Zwolenski: Mr. Kelly, you said that Mr. Bucci tested the water at the Parent's property before the construction and after?

Mr. Kelly: That's correct.

Mr. Zwolenski: Construction is still going on. Has any other testing, to your knowledge, been performed over there on any other properties whether they be, which could be a civil issue, but outside maybe on Old Smithfield Road, any other testing been done?

Mr. Kelly: I don't think that the three property owners that Mr. Fontaine has brought forth, I don't think that their wells were tested before. I may be wrong on that. I know that they haven't been tested since because we've been asking for any results that they may have. Mr. Fontaine told me there aren't any and Miss Hunt told me there aren't any.

Mr. Zwolenski (to Mr. Lombardi): I'm not sure if this is a civil issue with these residents but I'm also concerned, as you know, about residents abutting the development so I'm going to ask you if I can
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ask Mr. Kelly this question, can I pose a question to Mr. Kelly if he knows if Mr. Bucci has performed any testing anywhere else abutting the properties. Is that a fair question because it's a water issue?

Mr. Lombardi: Is that a fair question?

Mr. Zwolenski: Yes, I don't want to get into a legality here.

Mr. Kelly: I couldn't tell you whether there are other wells tested. The engineers would know that.

Mr. Zwolenski: Okay, that's fair.

ZONING ORDINANCE AMENDMENT RE: DISTRICT USE REGULATIONS

There was discussion about what would be allowed in the open space zone and it was agreed that anything that was now permitted would require a special use permit.

MOTION by Ms. Alves, seconded by Mr. McGee, and voted unanimously on an aye vote to close the public hearing.

MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted unanimously on an aye vote to correct verbiage in Section 5.1 from Residential Rural Conservation to Rural Residential Conservation and to correct Residential - Rural to Rural - Residential.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to change the following uses listed in the

chart under open space from a permitted use to requiring a special use permit: Section 5.4.1.1 Pets & Watchdogs; Section 5.4.1.3 Apiary; Section 5.4.1.5 Crops and Trees, non-commercial raising; Section 5.4.1.6 Crops & Trees, commercial raising; Section 5.4.3.4 Office, construction trailer; Section 5.4.4.9 Cultural Activities, including library, museums, aquarium; Section 5.4.4.17 Government, other municipal uses; Section 5.4.5.2 Public Parks, playgrounds, picnic groves, open land refuges and preserves, etc; Section 5.4.5.3 Golf Course, minimum of 3 holes; Section 5.4.5.4 Country Club; Section 5.4.5.5 Riding Academy or Stable, commercial; Section 5.4.5.6 Amusement Park, commercial; Section 5.4.5.7 Carnival or Circus; Section 5.4.5.8 Fairground or Exposition Grounds; Section 5.4.7.14 Amateur Radio antenna and/or tower, less than 70 feet in height; Section 5.4.7.16 Cellular Communications Antenna Array on an existing structure or building (subject to restrictions of Section 17); Section 5.4.11.4 Parking, off-street as an accessory to a permitted use; and Section 5.4.12.1 Any accessory use customarily incidental to a use permitted in the district and located on the same site.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to change Section 5.4.4.16 Incinerator from requiring a special use permit to a use that is not permitted in a Manufacturing zone.

MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted 4 to 1 (Mr. McGee voted no) on an aye vote that Section 5.4.6.3 Restaurant -

drive thru and inside eating requires municipal water.

MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted unanimously on an aye vote to change Sections 5.4.6.1(a) Restaurant/Banquet Facility (principal sales - food) seating capacity of up to 50 people; 5.4.6.1(b) seating capacity of 51 - 299 people; and 5.4.6.1(c) seating capacity of 300+ people to require a special use permit in a manufacturing zone.

MOTION by Mr. Zwolenski and seconded by Ms. Alves and Mr. Yazbak, and voted unanimously on a roll call vote to accept Section 5 District Use Regulations as amended.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on a roll call vote to accept Section 5.4 District Use Regulations as amended.

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ZONING ORDINANCE AMENDMENT RE: GROUNDWATER AQUIFER PROTECTION OVERLAY DISTRICT

Mr. Ericson noted there is a proposed change of the title to “Water Supply Protection Overlay District.”

Ms. Lorraine Joubert, a water protection expert at URI and part of the Nonpoint Education for Municipal Officials program, spoke about some of the proposed changes: adding the Woonsocket water supply surface reservoir to the protection area, updating definitions, adding procedures for special use permits, specifying use of stormwater management practices and setting impervious limits.

Mr. Yazbak questioned why the town would be going beyond Department of Environmental Management regulations. If state regulations are not suitable enough, why is it up to the town to fix it and not the state.

Mr. Ericson responded that every town has its own map of aquifer water and water bodies that need to be protected. The town has a responsibility.

Mr. Zwolenski asked Ms. Joubert her opinion on the percentages for impervious areas in the various zones. The ordinance proposes the following: M-40%, BH-35%, REA-10%, RA-12%, RS-15%, RU-25%, PS-35%, BN-35% and all commercial-35%. Ms. Joubert felt the percentages were reasonable.

Mr. Ericson recommended the following change to Section 6.19.8 Special Permits: “A waterbody and its watershed will be considered sensitive if a Total Maximum Daily Load is written or under development for it, or it is included on RIDEM’s 303(d) list, or is

included on RIDEM's list of Special Resource Protection Waters (Appendix D of the Water Quality Regulations), or has been noted by the municipality to be of special concern Town Council or the approved Comprehensive Plan."

Michael Rapko, of 25 Old Greenville Road, lives in an area where there is a lot of water. Above his house is the watershed for the reservoir which requires protection.

After the December 17th Council meeting, Gary Ezovski had been asked to offer some standards that could be built into this ordinance. The number of standards that have been developed and put into practice since concerns were first raised is mind boggling. After talking with other engineers, planners and surveyors, Mr. Ezovski was pointed to the 2010 Stormwater Design manual that DEM issued. There are 467 pages of regulations. Mr. Ezovski tried to encourage Mr. Ericson to look at the regulations that are already in existence to protect North Smithfield water resources.

Mr. Ezovski finds it frustrating to talk about these issues that he believes will make it harder to do business in Rhode Island. He believes this ordinance will have a major impact on future economic opportunities in town. Mr. Ezovski recommends a one-paragraph ordinance that states North Smithfield is a community that expects its developers and will see that its developers respect and adhere to state and federal regulations.

Mr. Flaherty was looking more for an alternative ordinance or specific changes to the ordinance from Mr. Ezovski after the discussion that had been held on December 17th. The concept of performance standards makes good sense to him but his concern with it is that it relies upon the town to do enforcement.

Ms. Joubert commented that the prohibited uses are minor changes to the prohibited uses that have been on the books for a long time. When she reviewed aquifer protection ordinances from other towns, the huge majority of the towns list the prohibited uses and they also list them in the use table. Some of them may have specific performance standards. Ms. Joubert and others felt the specific performance standards were not necessary because the goal is to prevent pollution, not to try and regulate it with performance standards. All of these potential threats are not regulated by the state. Residential tanks are not regulated by the state. There is an opportunity for anyone to

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come before the town to seek a special permit for relief if it is a prohibited use.

Caroly Shumway urged passage of the ordinance and map. She could probably get a letter of support from the City of Woonsocket. If

you add the surface water supply basin boundaries, you protect the drinking water for 25 percent of the town residents. Ms. Shumway commented the Ordinance Development Committee worked very hard to accommodate the business highway and the impervious coverage by zones is innovative for the state and will be a model for other towns.

Paul Soares, chairman of the Conservation Commission, said the commission supports the ordinance and also urges passage.

Mr. Ericson ended by saying this town has had prohibitions for a long time. This ordinance does what the comprehensive plan requires which is to deal with the surface watersheds for the water supply.

Paul Vadenais of the School Building Committee stated that in order to meet DEM requirements when the new middle school was built, they created underground infiltration systems.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to close the public hearing.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 3 to 1 (Mr. McGee voted no and Mr. Yazbak did not vote) on a roll call vote to amend Section 6.19.10(C) to read, “The maximum percentage of impervious area for each zone shall be as follows: M-40%, BH-35%, REA-10%, RA-12%, RS-15%, RU-25%, PS-40%, BN-40% and all other

commercial-40%. Residential lots of record that are non-conforming by area shall meet the requirements of the zone for which their area most nearly matches. Non-conforming lots of less than 15,000 square feet may use 40% impervious cover.”

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 3 to 1 (Mr. McGee voted no and Mr. Yazbak did not vote) on a roll call vote to amend Section 6.19.2 Definitions to add as the last line, “The term Water Supply Overlay District shall be synonymous with the term Groundwater Aquifer Protection Overlay District.”

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 3 to 1 (Mr. McGee voted no and Mr. Yazbak did not vote) on a roll call vote to amend Section 6.19.8 Special Permits to read, “A waterbody and its watershed will be considered sensitive if a Total Maximum Daily Load is written or under development for it, or it is included on RIDEM’s 303(d) list, or is included on RIDEM’s list of Special Resource Protection Waters (Appendix D of the Water Quality Regulations), or has been noted by the Town Council or the Comprehensive Plan to be a critical resource of special concern.”

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 3 to 2 (Mr. McGee and Mr. Yazbak voted no) on a roll call vote to adopt Section 6.19 Water Supply Protection Overlay District as amended.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted

unanimously on an aye vote at 9:57 P.M. to extend the meeting to 10:30 P.M.

MOTION by Ms. Alves, seconded by Mr. Zwolenski, and voted 3 to 2 (Mr. McGee and Mr. Yazbak voted no) on a roll call vote to accept the map with the amended title of Water Supply Protection Overlay District.

SCHEDULING PUBLIC HEARING DATE FOR PELOQUIN ZONE CHANGE

MOTION by Mr. Yazbak, seconded by Mr. McGee and Mr. Peloquin, and voted unanimously on an aye vote to schedule the public hearing for March 4, 2013.

SALE OF TOWN-OWNED LAND

Tax Assessor Chris Belair was unable to be present this evening so it was tabled to a later date.

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ZONING ORDINANCE AMENDMENT RE: WETLAND SETBACKS FOR ONSITE WASTE WATER TREATMENT SYSTEMS, OWTS, BUILDINGS AND IMPERVIOUS SURFACES

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted

unanimously on an aye vote to continue the public hearing to February 19, 2013.

ORDINANCE AMENDMENT RE: CHICKEN HENS

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to continue this to March 4, 2013.

APPOINTMENT OF 1ST ALTERNATE TO PLANNING BOARD

MOTION by Mr. Zwolenski to appoint Kerri Tunnickliffe of as the 1st Alternate to the Planning Board. The motion was subsequently withdrawn.

RESIGNATION FROM PLANNING BOARD - E. CURRIE

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to accept the resignation of Mr. Eugene Currie from the Planning Board.

APPOINTMENT OF 1ST ALTERNATE TO PLANNING BOARD

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to appoint Ms. Kerri Tunnickliffe of 7 Sunnycrest Avenue as the 1st Alternate to the Planning Board.

There was no appointment of a 2nd Alternate.

APPOINTMENT TO SEWER COMMISSION

There was no appointment.

APPOINTMENT OF 2ND ALTERNATE TO ZONING BOARD

There was no appointment.

MUNICIPAL COURT CLERK

MOTION by Ms. Alves, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to reappoint Darlene Bourgette.

TECHNOLOGY UPDATE

This was continued to a later date.

TOWN ADMINISTRATOR'S APPOINTMENTS

Ms. Hamilton made the following appointments: Town Administrator's Administrative Assistant - Malinda Howard; Tax Assessor - Chris Belair; Building Official/Zoning Inspector - Robert Benoit; Emergency Management Director - Peter Branconnier; Finance Director - Brenda MacDonald; Assistant Finance Director - Tracey Keegan; Police Chief's Administrative Assistant - Darlene Bourgette; Public Works Director - Raymond Pendergast; Sewer and Water Superintendent - Russell Carpenter; Public Safety Director - Paulette Hamilton; Electrical Inspector - Roger Menard; Electrical Assistants - Paul Shatraw, Michael Samborsky and Joseph Therien; and Plumbing and Mechanical Inspector - Michael Yuszczak.

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted unanimously on a roll call vote to accept Ms. Hamilton's appointment

of Debra Todd as Town Clerk.

MOTION by Mr. Zwolenski, seconded by Mr. McGee and Mr. Yazbak, and voted unanimously on a roll call vote to accept Ms. Hamilton's appointment of Patricia Paul as the Deputy Town Clerk.

SCHEDULING PUBLIC HEARING DATE FOR MU1 AND MU2 DISTRICTS

MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted unanimously on an aye vote to schedule the public hearing on March 4, 2013.

EXECUTIVE SESSION

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on a roll call vote to enter into executive session at 10:12 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective bargaining to discuss an update on contract negotiations with International Brotherhood of Police Officers Local Number 410 and Rhode Island Council 94, AFSCME, ALF-CIO, Local 937.

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MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted unanimously on an aye vote to come out of executive session at 10:29 P.M. and to seal the minutes. No motions were made and no

votes were taken.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to adjourn at 10:29 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk